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AUTOMOTIVE MACHINISTS LODGE 1173

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FAIRFIELD IMPORTS, LLC d/b/a  
FAIRFIELD TOYOTA, MOMENTUM  
AUTOGROUP and MOMENTUM TOYOTA  
OF FAIRFIELD,

Plaintiff,

And

AUTOMOTIVE MACHINISTS LOCAL  
LODGE NO. 1173, DISTRICT LODGE 190,  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO

Defendant.

Case No.: 20-CA-035259; 20-CA-070368;  
20-CA-088332; 20-CA-106248

**EXCEPTIONS TO THE DECISION OF  
THE ADMINISTRATIVE LAW JUDGE**

**EXCEPTIONS**

No.	Page	Exceptions
1.	Passim	The failure of the Administrative Law Judge (“ALJ”) to recommend that the Respondent be cited for contempt of Court in light of the violations found in this Decision.
2.	5:23-6:40	To the failure of the ALJ to find that the confidentiality agreement prohibits employees from disclosing information that concerns the employer’s business which impacts on wages, hours and working conditions or allows the employees to engage in protected concerted activity including boycotting, picketing, bannering and so on.

No.	Page	Exceptions
3.	6-22-30	To the failure of the ALJ to find that the prohibition against disclosing information regarding customers, suppliers, distributors is unlawful because it would prohibit employees from disclosing information which could be used for purposes of bargaining, representation, boycotting and protected concerted activity.
4.	6:23	To the failure of the ALJ to find the prohibition against disclosing organizational management and marketing processes, etc. is overbroad because it would prohibit employees from disclosing information for bargaining purposes, representational purposes or for boycotting or other protected concerted activity.
5.	6:28	To the failure of the ALJ to find that the provision is overbroad because it would prohibit the disclosure of any "records, reports or documents in any form..." This would prohibit disclosure of time cards, handbooks, notices to employees etc.
6.	6:32-34	To the failure of the ALJ to recognize that the language in the confidentiality agreement is overbroad because it relates to business issues which impact terms and conditions of employment, not only because they specifically relate to terms and conditions of employment. Furthermore the ALJ failed to recognize that the employees are entitled to disclose that information for purposes that concern protected concerted activity.
7.	7:12-26	To the failure of the ALJ to find that the Federal Arbitration Act cannot constitutionally be applied to the activity of arbitration which itself does not affect commerce even though activity of the employer does affect commerce.
8.	7:12-26	To the failure of the ALJ to recognize that the arbitration agreement would prohibit whistle blowing and other disclosure to government dispute resolution forums in addition to disputes between the employee and the employer.
9.	7:12-26	To the failure of the ALJ to recognize that this would prevent employees from bringing representative actions under the California Private Attorney General Act. See <i>Iskanian v CLS Transportation</i> in which the Supreme Court held that such waivers are invalid.
10.	7:12-26	To the failure of the ALJ to find the Arbitration Agreement is invalid because it prohibits the employee from bring collective or class claims against non-parties to the Agreement, the agreement is not mutual and the employer can terminate the agreement at any time.
11.	7:12-26	To the failure of the ALJ to find the Arbitration Agreement is invalid under the doctrine of <i>Sonic-Calabasas A, Inc. v, Moreno</i> , 57 Cal 4 <sup>th</sup> 1109 (2013)
12.	7:29-8:17	To the failure of the ALJ to recognize that this language would prevent a collective defense by employees to claims brought by the employer.
13.	7:29-8:17	To the failure of the ALJ to find that this language would allow the employer to name several employees in any claim against them but would prohibit them from bringing a group of collective action against the employer. Further by naming them as a group it would prevent them from refraining for collective activity.

No.	Page	Exceptions
14.	21:30-22:15	To the failure of the ALJ to recognize that by conducting an alternative work week election, the employer is required to communicate with the employees regarding proposed change and that the employer did in fact bargain directly with the employees.
15.	21:30-22:15	To the failure of the ALJ to recognize that implementing an alternative work week with an election is <i>per se</i> direct dealing.
16.	21:30-15	To the failure of the ALJ to recommend that the employees be made whole for loss of overtime wages by the unlawful direct dealing and unlawful change to a 4 – 10 work scheduled without paying overtime. The ALJ failed to order the employees be made whole for other losses including the additional expense of coming to work an additional day each week.
17.	23:12-13	To the failure of the ALJ to provide that the wage increases that were unlawfully granted should be returned to other workers by way of a bonus or other wage increase as part a remedy. The only way to remedy this unilateral change of increased wages is to distribute those amounts in the union's discretion.
18.		To the failure of the ALJ to recommend that the employees be made whole for loss of overtime as a result of the unlawful implementation of the 4-10 work schedule.
19.	23:42-24:7	To the failure of the ALJ to recognize that this conduct was a form of direct dealing.
20.	25:12-28	To the failure of the ALJ to recognize that where an employer has always exercised its discretion to allow used tires and parts to be taken home, a change in the policy to prohibit it is a unilateral change. As a remedy the employees should be allowed to take home for an extended period of time all used tires and parts without seeking permission.
21.	28:1-3	To the failure of the ALJ to recommend as a remedy for this violation that Mr. Bartolomucci be returned to work with a full back pay pending negotiating the decision to terminate him.
22.	28:33-36	To the failure of the ALJ to recommend as a remedy that Mr. Bartolomucci be returned to work because of the employer's failure to provide the witness statements.
23.	28:39	To the conclusions of law in their entirety in that they do not include conclusions of law consistent with the exceptions.
24.	31:12-38:12	To the remedy in that it is inadequate.
25.	32:29-34	To the failure of the ALJ to order that any increased wages be distributed by the Union as it would have done in bargaining.
26.	32:29-34	To the failure of the ALJ to allow employees to file claims in any forum as class action and that any statute of limitations be tolled during the period when the binding arbitration agreement was in effect.
27.	32:35-46	To the failure of the ALJ to allow a union representative to be present when any remedial notice is read.
28.	32:35-46	To the failure of the ALJ to require that the remedial notice be read at least five times.

No.	Page	Exceptions
29.	32:35-46	To the failure of the ALJ to recommend that the employees be paid during the period when any remedial notice is read. Since the employees are working under piece rate system the employer should pay them so that they don't lose anything for such reading.
30.	33:1-12	To the failure of the ALJ to recommend that the certification year be extended a year and that the employer be required to bargain for a sufficient period of time thereafter to ensure good faith bargaining,
31.	33:14-23	To the failure of the ALJ to recommend that a set schedule be required for bargaining. Furthermore to the failure of the ALJ to recommend that the employee negotiators be made whole for any loss earnings and that the Union be reimbursed for its additional negotiation expenses.
32.	33:14-23	To the failure of the ALJ to recommend that the union be reimbursed its negotiating expenses.
33.	35:16-46	To the failure of the ALJ to recommend that the employer's change in the policy regarding taking used parts and tires be rescinded.
34.	37:32-38	To the failure of the ALJ to recommend that the notification be provided to Mr. Bartolomucci and to the Union.
35.	37:32-38	To the failure of the ALJ to recommend that Respondent may not make any reference about the discriminate to any person in addition to those entities or persons listed.
36.	37:40-38:12	To the failure of the ALJ to include in their decision those changes which are encompassed within these exceptions.
37.	38:48-18	To the failure of the ALJ to require that the Notice be posted for at least for the period during from when the charge in this matter was filed until the notice was posted.
38.	38:48-18	To the failure of the ALJ to require that the notice be posted on any Internet which is available to the public.
39.	38:20-21	To the failure of the ALJ to recommend that the notice be read at least 10 times in the presence of the Union.
40.	38:26-27	To the failure of the ALJ to recommend that the certification year be extended for two years or in the alternative for one year plus additional period of time to ensure adequate good faith bargaining.
41.	38:35-39-6	To the failure of the ALJ to recommend that the notice be posted as reflected in the prior discussion including on the internet and for a longer period of time.
42.	38:35-39-6	To the failure of the ALJ to recommend that the employer provide a copy of the decision to all employees who have worked in the unit from when the unfair labor practices began. This would include mailing it to them. The employer should be required to use UPS for such delivery.
43.		To the recommendation that the Notice include the language "Choose not to engage in any of these protected activities."

No.	Page	Exceptions
44.		To the failure of the ALJ to recommend that in the notice that there be a language stating and acknowledging the violations which have occurred. The "we will not" language is inadequate to tell employees about the unlawful conduct. The employer should be forced to acknowledge the violations of the Act.

Dated: July 1, 2014

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD  
CAREN P SENCER  
Attorneys for Charging Party  
AUTOMOTIVE MACHINISTS LODGE 1173

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**CERTIFICATE OF SERVICE**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that on July 1, 2014, the **EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** document was served on the following parties as addressed below via E-Filing, E-Mail and U.S. Mail:

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Via E-Gov. E-Filing

I certify under penalty of perjury that the above is true and correct.

Executed at Alameda, California, on July 1, 2014.

/s/ J. L. Aranda  
\_\_\_\_\_  
J. L. ARANDA